

19 October 2011

General Manager
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: futureofadvice@treasury.gov.au

Dear Sir/ Madam

Exposure Draft - Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011

CPA Australia, the Institute of Chartered Accountants in Australia, and the Institute of Public Accountants (the Joint Accounting Bodies) represent over 190,000 professional accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

We welcome the opportunity to comment on the *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011*.

A key tenet of the FoFA reform package is to improve the trust and confidence in the financial advice industry. Addressing the perceived and real concerns with current remuneration structures, by removing payments including commissions and volume-based payments, is pivotal to achieving this objective and ensuring advice is focused on the needs of the client. We believe this will strengthen consumer confidence in the quality of financial advice.

For these reasons, the Joint Accounting Bodies have long supported removing conflicted remuneration from the financial advice industry.

While the Joint Accounting Bodies support the draft legislation's endeavours to remove conflicts of interest, we are concerned that the proposed carve-outs will weaken the effectiveness of the reforms.

Our concerns relate to the following proposals.

Representatives of the Australian Accounting Profession



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The Institute of
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in Australia

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Life insurance products outside superannuation and within non-default superannuation funds

The Joint Accounting Bodies do not support the draft legislation's carve-out of life risk insurance products sold outside of superannuation and individual life risk policies within superannuation for non-default funds.

On 28 April 2011 the Government stated that banning all forms of commissions within superannuation is in the best interests of consumers¹.

This position is consistent with the recommendation 5.12 of the *Cooper Review*:

Up - front and trailing commissions and similar payments should be prohibited in respect of any insurance offered to any superannuation entity, including to SMSFs, regardless of rules on commissions that might apply outside superannuation.

It is also consistent with the findings of ASIC, where in *Report 69 Shadow Shopping survey on superannuation advice* they found that unreasonable advice was 3–6 times more common where the adviser had an actual conflict of interest over remuneration (e.g. commissions) or recommending associated products².

All payments deemed to be conflicted remuneration should be regulated consistently.

Choosing to not ban conflicted remuneration on life risk insurance products in these specific circumstances, irrespective of the proposed best interests test, risks the continued provision, perceived or real, of inappropriate advice to consumers who seek advice on these products.

Further, we do not believe there are sufficient grounds which warrant these products being excluded from the regulation proposed to apply to other like products. Such 'carve-outs' add complexity to the provision and administration of advice, which would ultimately be passed on to the consumer. Such increases will further impede the Government's important objective of increasing the accessibility of advice for consumers.

Execution-only sales

While we understand the objective of the draft legislation is to ban the receipt of certain remuneration by licensees which may have the potential to influence advice, we recommend the ban should be extended to include execution-only sales.

The proposed carve-out may motivate behaviour which encourages execution-only sales and lead to an inherent conflict between remuneration models where advice is and is not provided. It may further encourage licensees to provide execution-only sales rather than provide advice.

For non-advice or execution-only it is in simple terms an administration service and as a result a remuneration model should align with the actual service being provided (e.g. flat dollar) as opposed to a remuneration structure based on sales.

Scaled rebates for asset management fees for scale of efficiencies

We believe that a platform operator should only be able to receive an asset-management fee discount in the form of a rebate, where the rebate represents reasonable value of scale efficiencies, if the value of this rebate is passed on to clients invested in the respective fund manager.

We believe the Government risks allowing the industry to maintain forms of conflicted remuneration if the licensee can continue to receive this rebate, given the discount should rightfully be received by the client.

Fixed or one-off shelf space fees paid to platform operators

It is our understanding that the policy intent of banning volume-based shelf-space fees is to prohibit preferential treatment of fund managers who pay higher volume rebates to the platform operator. However, it is not intended to ban fixed or one-off payments by fund managers to platform operators.

¹ [Future of Financial Advice 2001 Information pack](#), 28 April 2011 p.7

² ASIC Report 69 – Shadow shopping survey on superannuation advice p.2

The Joint Accounting Bodies are concerned that continuing to allow fixed or one-off shelf fees may still lead to preferential treatment of fund managers, especially those who pay a higher fee. Further, such fees also have the potential to impede small or boutique fund managers from entering the funds management market who may not be able to offer similar incentives.

Ban on asset-based fees on geared funds

As drafted, a licensee will be permitted to charge an asset-based fee on the ungeared component of a retail client's funds but not the geared component. However, previous stakeholder consultation had indicated that for this reform to have effect the ban must apply where there is any leveraged component involved in a retail client's investment strategy.

We believe permitting an asset based fee to be charged on the 'ungeared' component of a retail client's funds will create confusion for the consumer, who may as a result of this policy decision be charged via multiple remuneration models. Further, it risks licensees and their representatives manipulating pricing structures so no or a very low fee may be payable on the geared component of the investment fund and a higher asset-based fee is charged on the ungeared component of the investment fund.

Complex remuneration models may also lead to increased administration costs, which will inevitably result in the consumer having to pay a higher fee to access advice.

We do not believe such outcomes would be in the public interest, nor would they remove complexity from the advice charging process. Therefore, we would prefer to see that asset based fees be banned where any component of the overall advice involves gearing.

If you have any questions regarding this submission, please do not hesitate to contact Keddie Waller (CPA Australia) at keddie.waller@cpaaustralia.com.au, Hugh Elvy (the Institute) at hugh.elvy@charteredaccountants.com.au or Reece Agland (IPA) at reece.agland@publicaccountants.org.au.

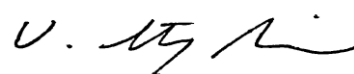
Yours faithfully



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1. Conflicted remuneration

Notwithstanding our earlier comments, our specific comments in regards to the exposure draft are as follows:

Section 963 *Conflicted remuneration*

(2)(a) - (c)

The words 'access to which' should be removed from the beginning of each sentence in sections (2)(a), (b) and (c) so that each section begins 'a benefit, of the value of which, is dependent on'

Section 963E Licensee must ensure compliance

The financial services licensee has overarching responsibility for the advice and conduct of their authorised representatives. The Joint Accounting Bodies believe further guidance is required to clarify what entails 'reasonable steps' in order to demonstrate how such a duty is discharged.

2. Other banned remuneration

Section 964B What is a volume-based shelf space fee

(2)

A further provision should be added to this section which specifically requires the platform operator who receives a benefit in the form of a rebate, for reasonable value of scale efficiencies, to pass the value of the rebate onto clients invested in the respective fund manager.